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Landscape Library

WHAT IS "PROFESSIONAL" PRACTICE IN LANDSCAPE ARCHITECTURE?

By FREDERICK LAW OLMSTED

"PEOPLE in this locality don't want to pay me for professional advice unless I will carry out the work. How can I satisfy them without acting unprofessionally?"

"What is 'professional' and what is 'unprofessional' for a landscape architect to do in the way of 'executing work'?"

"Is it always unprofessional for a landscape architect to do 'contracting'?"

These are representative of a class of questions which are often asked by the younger landscape architects and which the most experienced cannot always answer clearly and without hesitation.

This article is an attempt to clarify the main principles involved in all such questions. With a firm grasp of these principles honesty and common sense will show anyone the proper answer to his own particular question.

The "Official Statement" of the American Society of Landscape Architects says of the landscape architect in good professional standing that: "His remuneration is an openly stated compensation received directly from his client for services rendered, and not a speculative* profit on materials supplied or labor employed." It further says that he "supervises the execution of his plans" and that "He acts . . . as his client's agent in selecting and ordering materials and in issuing instructions for the execution of work by contractors or others."

Let me add that, while nothing is said about it one way or the other in the "Statement," the reference in the above passages to "supervision" and to "issuing instructions" cannot be interpreted as excluding personal performance of mechanical manual labor by a landscape

*As originally issued the "Statement" read "not a commercial profit." The phrase "speculative profit" is more exact, as will be pointed out in this article, and the Trustees of the Society have voted to recommend the amendment of the "Statement" as here quoted.

architect or his assistants; whether that labor is pushing a pen, or cutting down a tree which blocks a view that he wants to open immediately (instead of waiting until he can find a man that holds a card in the Amalgamated Axemen's Union).

It seems clear that it would not be out of accord with the letter or the spirit of the above passages for a landscape architect, at the request of a client, to assume responsibility for issuing *all* the orders necessary for the proper execution of work, even though in so doing the landscape architect were to perform substantially all the managerial and executive functions ordinarily performed by a "contractor;" provided only that "his remuneration is an openly stated compensation received from his client for services rendered and *not a speculative profit* on materials or labor employed."

As I understand it, the essentially distinguishing feature of "speculative profit" or "commercial profit" in this connection is that the amount of such profit is indeterminate, is not accounted for to the party who pays it, and may be increased to any extent by which the energy, skill or luck of the contractor enables him to keep the cost of the work or materials or both below the amount for which he contracted to get the results accomplished.

It is clearly unprofessional for a landscape architect to take a "lump sum contract" or a "unit price contract" or any other form of contract for the furnishing of "materials" or the supplying of "labor" by which he becomes obligated to produce a result for a certain price and is entitled to whatever margin of profit there may be between the actual cost of achieving that result and the price for which he contracted to produce it. It is not in itself essentially and inevitably unprofessional for him to undertake a "cost plus" contract, by which he agrees to act as the *agent* of the client in bringing about the execution of his plans, provided his compensation over and above his reimbursement for authorized and accounted for expenditures on behalf of the client is a known amount, which may be either a lump sum, or a fee based upon

time (such as a per diem charge or other periodic charge or salary) or an agreed percentage. There are some objections to fixing that compensation by a percentage on the cost of the work, but it cannot be said that such a basis is in itself unprofessional.

To make the matter clearer I will set forth successive extensions of the field of activity under an agency contract. But first let me remove a frequent source of misunderstanding in the use of the words "contractor" and "contracting," and point out the essential nature of an agency contract as distinguished from the type of contract of which the familiar "lump sum contract" is representative.

A contract is "any agreement between two or more parties for the doing or the not doing of some definite thing." Every professional man enters into a contract, expressed or implied, whenever he accepts employment; and is therefore strictly speaking a contractor. But the words "contractor" and "contracting" are often used more or less colloquially, to connote a particular kind of contract. Unfortunately when used in this limited colloquial way their connotation is apt to be differently understood by different people. Some people habitually understand them as referring only to "lump sum contracts" and "unit price contracts," especially for the execution of buildings and works of engineering and landscape architecture; but many whose main business is "contracting" in this limited sense, also undertake similar works under "agency contracts," especially under contracts of the "cost plus percentage" type; and there are some who do such work exclusively under "agency contracts" and who are nevertheless colloquially called "contractors."

Under an agency contract the contractor, so long as he acts within the limits of his authorization, need assume no financial responsibility on his own account and acts strictly as an agent of his principal. Any claim for payment on account of services rendered or requested, or goods delivered or ordered, or damages sustained, as a result of his action as agent (within the scope of his authorization by his principal) is a claim

not against him personally but against his principal, by whose authority and on whose account he acts. His authorization may limit the total of expenditures for which he may contract with others on behalf of his principal; but it cannot at the same time obligate him to produce certain results within that sum. It can only require him to stop incurring obligations when the limit of the appropriation is reached, whether the proposed result has been accomplished or not. If as a result of his legitimate action (within the scope of his authorization) damages are incurred, his principal is liable for those damages even though they exceed the amount of the appropriation within which he was instructed to keep the cost of the work. He is obligated to use due diligence and skill in protecting his principal's interest, but guarantees nothing beyond that.

The lump-sum contractor, on the other hand, is his own principal, and undertakes to produce for the other party to the contract a more or less well defined result for a certain sum. He hires and fires on his own account, buys goods on his own account and enters into other contracts on his own account. Claims for payment growing out of his actions, including claims for damages sustained as a result of his action, are claims against him and not against the other party to the contract. He takes a speculative risk, and he makes a speculative profit if he can, and as large as he can. He is not accountable to the other party to the contract for the amount of that profit nor for the actual cost of the work. He is in the position of the speculative purchaser of any commodity who sells it as best he can, accepting a loss if he must, and making all the profit he can in the face of the competition of others.

There need be nothing in the least degree unfair or dishonorable in this relation of a speculative contractor or vendor to his customers. But such a relation is absolutely incompatible with the fiduciary relation which a professional landscape architect assumes to his client, because the essence of that relation is the obligation which he assumes to protect his client's legitimate interests in the matters at issue to the best of his ability. He can not run with the hare and hunt with the hounds. If

he tries it, under whatever pretext or in whatever form, he is not merely acting unprofessionally; he is outright dishonest.

Now let us return to the scope of what may be undertaken by a professional landscape architect under an agency contract.

It is a frequent arrangement for a landscape architect, especially upon small or upon complicated and delicate work, to recommend to a client the employment of superintendents or foremen in whom he has confidence, to advise or direct them in their employment of laborers and artisans, to direct their work, to order materials for the client, and to check and recommend for payment by the client the payrolls and bills as they become due. Less frequently the landscape architect may receive deposits of cash in advance from the client and draw upon them for payment of bills and payrolls on the client's account as they become due, submitting vouchers to the client subsequently when he accounts for expenditures made. Still less frequently, but, so far as I can see, without any essential change in the character of the relationship, he may, if so requested, borrow the funds from a bank or other source of credit and make similar payments on the client's account, charging up interest payments on these borrowed funds as part of the cost of the operation, and accounting as before with proper vouchers for all expenditures. Finally he might furnish the funds out of his own capital, and charge interest thereon as a banker would do. If in the latter case his charges for interest on the capital advanced were not segregated but were lumped with certain other overhead expenses in the general charge for his services, he would be precisely in the position of the ordinary "cost-plus" contractor, and if the charge for thus furnishing the capital and his other services be reasonable and clearly defined in advance, it is difficult to see exactly how he has crossed the Rubicon and entered the field of clearly and inherently unprofessional conduct.

Take notice that I do not approve such a procedure as a general one for landscape architects, for reasons which I will set forth. But I do

say that even such an agency contract as the last seems to me, in strict logic not necessarily unprofessional *per se* in special cases.

The primary objection as a practical matter to extending the scope of a landscape architect's business far in that direction is that it involves a constantly increasing emphasis upon purely executive and managerial activities, the devotion of a constantly increasing share of his time and energy to such activities, and a corresponding reduction of the share of his time and energy devoted to problems of design.

Now the reason for the existence of a profession of landscape architecture is to provide people highly skilled in the Art of Design applied to landscape problems, and having sufficient executive ability to secure the effective realization of their designs. And in so far as development of his executive activities tends to withdraw emphasis from a landscape architect's function as a designer, and materially diminishes that effective concentration upon problems of design which is the only means of developing his skill therein, it tends to convert him from a landscape architect into something else—commonly called a contractor—irrespective of whether he practices contracting in a professional manner under agency contracts or whether he practices it commercially and speculatively under lump sum or unit price contracts.

The same sort of reasons which make desirable the degree of specialization that distinguishes landscape architects from architects, and that distinguishes both of them from engineers, make it highly important to maintain and develop the specialization and separation of landscape architects from "contractors." Under circumstances which make it difficult or impossible to obtain the services of competent "contractors" for landscape work, a landscape architect is justified in going further in assuming executive responsibilities, professionally and as an agent, than is ordinarily wise or proper; but it must not be forgotten that even where competent contractors are scarce it is to the interest of the profession and of its clients to develop good landscape contractors rather than to discourage their development by performing the functions proper

to them in combination with the special functions peculiar to landscape architects.

In other words a landscape architect ought to keep clear of undertaking, even in a professional manner, the executive functions proper to a "contractor" just as far as he can do so without manifest and substantial injury to the interests which are confided to him by his clients.

Looking at the matter from the most selfish point of view, it is normally a short-sighted policy on the part of the landscape architect to undertake what are properly "contractor's" functions, for the mere sake of earning the compensation which goes with these extra jobs, or even through an easy-going acquiescence in the request of a client, just as it would be to undertake the functions of a real estate agent or a hotel keeper. Working at such "side lines" is apt to seem a confession that he can not earn his salt as a landscape architect, and it certainly tends to spread him out so thin as to lose the advantages which come from proper professional specialization. This is not the day of the Jack-at-all-trades who is master of none.

The foregoing discussion should have made it clear that there is no simple criterion by which, under all circumstances, the line can be sharply drawn between what a landscape architect can properly do in the execution of his designs and what he should not do. Experience has shown, however, that there are certain critical points which should be regarded as red flags, marking dangers that ought not to be incurred by a landscape architect without the most careful and meticulous consideration of the circumstances of the particular case, lest he get himself into a false position; a position either essentially unprofessional or likely to appear so to others in the absence of a much fuller explanation than is usually possible.

One of these danger points is the disbursement of his own funds by a landscape architect for materials delivered to a client either through him or direct. Such disbursement *may* be entirely aboveboard and fully

understood and accounted for between him and his client; but it is a regular and usual step in the mechanism of purchase and sale for personal commercial profit, and as such ought to be avoided by the professional man. It is practically always possible to avoid it; as by inducing the client, if necessary, to establish a drawing account from which payments or advances are to be made on the order of the landscape architect.

In the rare instances where a landscape architect cannot properly and reasonably avoid drawing checks in payment for plants or other materials purchased for a client, it is desirable, in order to make the relationship clear, to open a separate bank account and sign the checks as "Agent for ————."

The same considerations apply to payments by the landscape architect on account of other contracts entered into on behalf of the client, or on account of "labor" payrolls.

This brings up the point that no sharp and invariable line can be defined between what are and are not "materials" or "labor" in the meaning of the Statement. The pencils used by a landscape architect in making his studies are in fact materials, but common sense shows that it would be ridiculous to attempt to charge them up in detail at exact cost to every client for whom a landscape architect works. They are lumped in as a part of the overhead cost of his business by the landscape architect, and the charges which pay for his services go in part to meeting these overhead expenses. It might be an amusing hair-splitting, academic question for accountants to say whether his lump charges for services should or should not be regarded as including a minute element of "profit" on such materials used in rendering the service; but so long as such theoretical profit is utterly negligible in amount and has no practical influence upon his total charges, the question remains academic and of not the slightest consequence. If the materials which he thus buys and uses in performing his services should become so abnormally costly in any special case or cases that he is forced to take special account

of them in fixing his total compensation, he would do well in such a case to arrange for charging them up to the client in detail *at cost*, or if the cost cannot be fixed with absolute precision, at an approximation to cost so close that no possible element of profit in the transaction substantially influences the amount of his bills. If he goes beyond that point he is substantially open to the charge of deriving his compensation from a "commercial profit on materials used."

The case is sometimes more perplexing as to "labor." The labor of his office boy or his stenographer is ordinarily charged to a landscape architect's overhead expense along with his office rent, and its cost is recouped (with or without a theoretical but wholly negligible "profit") out of his total charges to clients. The same is true of the labor of draftsmen and other assistants only in case the landscape architect's fixed fee covers their services as well as his own (whether it be a lump sum fee, or an acreage fee, or a fee based on a percentage of "total cost"). The cost of the services of such assistants varies widely in different kinds of jobs. As long as it is small relatively to the charge for his personal services the question of a "profit" on it is academic and negligible. But it may legitimately, and in the client's best interests, become very large in some cases, far exceeding the charge for the landscape architect's own personal services. In such cases the question of whether the charge for the "labor" of assistants includes a substantial profit becomes professionally important.

Absolutely no hard and fast line based upon the character of the work done can be so drawn as to separate that which is "labor" from that which is some kind of highbrow-stuff distinguishable from "labor." A landscape architect's planting assistant may just as legitimately and just as professionally set a plant with his own hands, if that is an efficient way to get the best results, as to draw plans and give long explanations of how he wants it done.

In the interest of the best art we should not interpose any artificial barriers tending to keep the landscape architect and his regular trained

assistants at arm's length from the work. The closer the personal contact and responsibility for details the better for the work.

What then is to prevent a landscape architect from gradually increasing the functions assumed by his employees until they are doing a large part of the "labor" of a job, in any common-sense use of the word labor?

Nothing, except the objection previously raised against his habitually undertaking executive functions at the expense of his proper emphasis upon the functions of design, *provided* he is not making a "commercial profit" on the labor of his assistants. In any case where the pay of his employees is likely to be more than a minor item in the total which he charges against his client he ought, I believe, to avoid charging for their work on a lump sum basis; or on any basis which fixes his total compensation without regard to the amount which he pays out to his employees, and which leaves him to make a considerable speculative profit or loss on the transaction according to whether they "get away" with doing only a little work on the job or put in a great deal of work.

This is one of the reasons why I think the method of charging an agreed lump sum fee to cover professional services *and* expenses, should not be used where so large an amount of assistants' services is involved that the compensation for the personal services of the landscape architect becomes a minor item in his total bill.

The same objection of course holds against a fee fixed by a percentage relation to the total cost where that fee is intended to cover a large amount of assistants' services.

But in view of the actual custom of some entirely reputable landscape architects, and of most architects, of charging on the basis last mentioned, it would be quixotic today to regard it as unprofessional provided the practitioner who uses it is scruplously careful to confine the work covered by such a fee well within the customary limits of making plans and other office work and occasional supervision, and to avoid any obligation under such a contract of furnishing what might possibly be construed as "labor."

Any method of charging a client for the services of a landscape architect's employees which avoids the possibility either of substantial speculative profit or of considerable loss *from this source* leaves the landscape architect free to use his best judgment, substantially without the bias of financial self-interest and without the suspicion thereof, in deciding what work and how much work to have done by his own employees for the client, and what to have done by others not on his own payroll. He is then in the best position to establish the value of the skilled and disinterested service which he renders in deciding such questions and in the general direction of the work, and to charge for that service known fees properly commensurate with its value.

A method of charging for the services of assistants without substantial speculative profit or loss must take account of the indirect costs or overhead expenses. No such method can be absolutely exact, because the apportionment of general overhead expenses among many different jobs served by the facilities which are represented in the overhead expense is always a matter of somewhat arbitrary judgment. A rough approximation is enough, *if it is intelligently scrutinized from time to time and readjusted with an honest, common-sense attempt to make it reasonably fair.*

A brief reference to the history of this matter in the Olmsted firm will help to indicate at least what I believe to be the right tendency.

Forty years ago the usual method of the firm was to charge a lump sum fee which covered the services both of members of the firm and of assistants, and the general overhead expenses, with provision in some cases for charging separately in addition only certain specified, easily segregated and directly chargeable items like traveling expenses. The office force was small and a large part of the working up of details was apt to be done by employees of the client, often recommended for employment by the firm, and working on the job under the advice and supervision of the firm. In case of large works extending over a consider-

able period there is much to be said for this method of pushing the details of designing out on to the job itself.

But as circumstances made it appear desirable in the client's interest in more and more cases to have a large amount of detailed plan work, etc., done by office assistants, the practice grew up of charging for these assistants' services separately from the fee at the *direct* cost of these services, the overhead expenses of the office being still covered by the professional fee.

About twenty-five years ago, the size of the office having grown pretty large, it became apparent that this method often resulted in a loss, and anyhow was undesirably speculative because much of the overhead expenses such as rent, light, heat, drafting materials, equipment, etc., (not to mention the cost of idle time of assistants, "ready to serve") were much more nearly proportional to the amount of assistants' services used on a given job than to the personal services of the firm. Therefore the method followed in many engineers' offices was adopted, namely charging up assistants' services at *twice* the rate per hour at which those assistants were paid, in order to cover overhead expense, while the "professional average fee" (which appeared on the bills separately from the charge for assistants' services) was reduced so as to represent more nearly the value of the personal services rendered by members of the firm.

It was found that year in and year out this method of charging for assistants' services covered, in the gross, the entire direct cost of the assistants' services and the entire overhead expenses of the office with a margin of "profit" which in some years reached as much as 18 to 20 per cent. We came to regard this as not a sufficiently fair approximation, especially as between different jobs, and it became the practice to make an arbitrary and voluntary scaling down of the 100 per cent "margin" n special cases where it seemed unfair to the client.

Later, with the gradual improvement of our cost accounting methods, differentiations were made between several classes of assis-

tants' services which plainly involved different proportions of overhead expense, different rates of "margins" were charged on these different classes, and at the end of each year the different items of actual overhead expense were apportioned against the several "departments" thus established with a real effort to make the apportionment approximately fair. At present the "margins" for meeting overhead expense vary from 25 per cent to 80 per cent on the pay of different classes of assistants for those hours during which their time is directly chargeable to specific work orders. Of the total overhead expenses about one quarter is charged against the personal professional services of the firm as representing the amount of rent, etc., and clerical assistance, etc., and equipment, library, etc., which the firm would require if the drafting and other directly chargeable assistants' services, together with their necessary overhead expenses, were furnished by the clients themselves, as they are in the case of some well organized municipal departments which we serve in a consulting capacity.

When we see that with the margins charged any "department," other than the personal professional services of the firm, is beginning to show a continuing loss, or a "gain" so considerable as to be more than a reasonable assurance against occasional losses, we endeavor to readjust the margins more equitably.

This is primarily a system of cost accounting and is followed for our own information even in those cases where we contract with a client to furnish certain services for a specified lump sum, or within an agreed maximum cost. It enables us to know with tolerable precision at any time what each work is costing us, including its fair share of overhead expense.

But in the majority of cases our contracts with clients provide for charging a fee for the personal services of the firm, plus expenses as actually incurred from time to time, "expenses" being defined as including pay of assistants together with the corresponding share of overhead expense. We are then substantially in the position of a trusted employee

on a salary, who either employs subordinates in the service of his employer at his employer's expense (without profit or loss to himself), or delegates work to contractors, as may seem most advantageous to his employer.

Under this system we feel at liberty and our clients are glad to have us feel at liberty to send our own assistants to a job, and have them stay as long as necessary, and do whatever work is necessary in the client's interest to get the desired results if that seems more expedient for the client than having such work done by people not in our employ.

We do, however, systematically try to avoid getting our organization needlessly entangled in executive work which can be efficiently done by others and which might interfere with our proper professional concentration on problems of design.

There is no sense in a pharisaical attitude of adhering mechanically to any single precisely defined method as the sure way of salvation, and of regarding all others as necessarily "unclean." The real point is to use common sense, honesty, and a constant scrutiny of the effect and tendency of one's methods in the light of three principles:

1. That the professional landscape architect assumes a fiduciary obligation to give only such advice and take only such action as will best serve the client's legitimate interests.

2. That in consonance with this obligation he must avoid putting himself in a position where his advice or actions might be influenced adversely to his client's interest by regard for his own financial interest in possible speculative or commercial profits.

3. That his primary function is design, and that he should avoid putting himself in a position likely to emphasize executive or managerial functions at the expense of the function of design.